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10/700,022

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EXAMINER

DAILEY, THOMAS J

ART UNIT

PAPER NUMBER

2152

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/700,022	<b>Applicant(s)</b> ULATE ET AL.	
	<b>Examiner</b> THOMAS J. DAILEY	<b>Art Unit</b> 2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 1-60 are pending.

### ***Response to Arguments***

2. The 35 USC 112 rejections directed at claims 4, 17-19, 21, and 42 have been withdrawn in view of the entered amendment.
3. The affidavit filed on April 3, 2008 under 37 CFR 1.131 is sufficient to overcome US Pub. No. 2005/0100311 (Hohenacker).

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5-6, 8-9, 13, 16, 20-23, 26-27, 30-31, 34, 38-40, 43-47, 49, 51-54, 57, and 59-60, are rejected under 35 U.S.C. 102(b) as being anticipated by Hohenacker (WIPO Pub. No. WO/2002/080519 A2), hereafter "Hohenacker."
6. Note that as Hohenacker '519 is the publication of the PCT which US PG Pub. 2005/0100311 (cited in previous action) claims priority to (see '311 label 86 page 1: "PCT/EP02/01778" and Hohenacker '519, label 21 page 1:

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"PCT/EP02/01778") the examiner is utilizing US PG Pub. 2005/0100311 as the English translation of Hohenacker '519. Therefore all citations are taken from PG Pub. 2005/0100311. Support for this practice can be found in MPEP 901.05(III) which recites:

Duplicate or substantially duplicate versions of a foreign language specification, in English or some other language known to the examiner, can sometimes be found. It is possible to cite a foreign language specification as a reference, while at the same time citing an English language version of the specification with a later date as a convenient translation if the latter is in fact a translation. Questions as to content in such cases must be settled based on the specification which was used as the reference.

7. As to claim 1, Hohenacker discloses an interactive personal service provider for video communication having a studio (Abstract) comprising:

an audio and video recorder to record at least one performance thereby making a recorded performance (Fig. 1, label 30 (audio recorder) and label 39 (video recorder) and [0073]-[0074]);

at least one computer server for storing said recorded performance (Fig. 1, label 31 and [0063]) further comprising:

an audio and video player to preview said recorded performance ([0091]);

and

a database to receive input information from a studio user that relates to said recorded performance ([0083]); and

a communication connection to transmit said recorded performance to a studio site maintained by a studio operator ([0040]-[0041], recording centre reads

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on a studio site) wherein said recorded performance is categorized and wherein said site enable a plurality of viewers to view said recorded performance ([0043]-[0045]).

8. As to claim 20, Hohenacker discloses a method for placing a performance of a studio user on a studio site, said method comprising the steps of:
  - a. providing a studio in a public locations ([0005]) wherein said studio comprises an audio and video recording capability (Fig. 1, label 30 (audio recorder) and label 39 (video recorder) and [0073]-[0074]);
  - b. recording a performance of a studio user in said studio onto a studio server thereby creating a recorded performance ([0063]);
  - c. categorizing said recorded performance by subject matter in a database ([0079], different types of video recordings can be made and [0093] discloses how different types of recorded materials are handled differently, i.e. they are inherently categorized); and
  - d. making said recorded performance accessible from a studio site maintained by a studio operator ([0040]-[0041], recording centre reads on a studio site).
9. As to claim 38, Hohenacker discloses a method of recruiting talent comprising:
  - a. providing a studio in a public place for at least one studio user to record a performance ([0005]);

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b. recording said performance in said studio on a studio server thereby making a recorded performance ([0063]);

c. transmitting said recorded performance to an information seeker ([0040]-[0041]).

10. As to claim 51, Hohenacker discloses an apparatus for distributing information to at least one information seeker said apparatus comprising:

at least two studio booths ([0001]) wherein each studio booth is equipped with an audio and video recording device (Fig. 1, label 30 (audio recorder) and label 39 (video recorder) and [0073]-[0074]) and is located in a publicly accessible location ([0005]); and

a studio site connected to each said studio booth wherein a plurality of studio users can access one of the plurality of said studio booths to upload a performance ([0040]-[0041], recording centre reads on a studio site).

11. As to claims 2, 21, and 57, Hohenacker discloses said studio operator can query said database for criteria specified by an information seeker ([0029]-[0030]).

12. As to claim 3, Hohenacker discloses a viewer is restricted from viewing said input information of said studio user on said site ([0093]).

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13. As to claims 5, 23, and 44, Hohenacker discloses a professional media kit is produced from said input information and said recorded performance ([0046]).

14. As to claim 6, Hohenacker discloses an information seeker can query said input information ([0029]-[0030]).

15. As to claims 8, 26, 45, Hohenacker discloses said recorded performance is reviewed by a personal coach ([0026]).

16. As to claims 9, 27, and 46, Hohenacker discloses said recorded performance comprises a Karaoke-style performance performed in said studio ([0079]).

17. As to claims 13, 31, and 53-54, Hohenacker discloses said studio site comprises a website ([0050]).

18. As to claims 16 and 60, Hohenacker discloses a video conferencing capability ([0079]).

19. As to claim 22, Hohenacker discloses information is input by said studio user prior to making said recorded performance accessible at step d ([0030]).

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20. As to claim 30, Hohenacker discloses said studio user agrees to an exclusive agency contract with a studio operator prior to step b ([0081]).

21. As to claims 34 and 59, Hohenacker discloses said recorded performance comprises at least two studio users in at least two separate locations ([0001]).

22. As to claim 39, Hohenacker discloses said studio user further provides demographic information ([0030]).

23. As to claim 40, Hohenacker discloses a talent seeker may access said demographic information ([0030]).

24. As to claim 43, Hohenacker discloses said demographic information is transmitted to a talent seeker ([0030]).

25. As to claim 47, Hohenacker discloses said recording of step b) is achieved in an interview fashion whereby questions are transmitted through at least one speaker ([0008]).

26. As to claim 49, Hohenacker discloses said information seeker at step c) further views said recorded performance from an internet connection ([0040]).



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27. As to claim 52, it is rejected by the same rationale set forth in claim 1's rejection.

***Claim Rejections - 35 USC § 103***

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

29. Claims 10-11, 28-29, and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hohenacker, as applied to claims 1, 20, and 38, in view of what is well known in the art.

30. As to claims 10 and 28, Hohenacker does not disclose said studio is substantially soundproof.

However, it is well known practice to one of ordinary skill in the art to make recording studio's substantially soundproof. Therefore, Official Notice (see MPEP 2144.03) is taken that practice was well known in the art and is implemented to gain the advantage of higher quality audio recordings (i.e. less background noise) by using substantially soundproof recording studios.

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31. As to claims 11 and 29, Hohenacker does not disclose said audio and video recorder enables said studio user to transmit only one recording from at least two performances recorded by said studio user in said studio.

However, allowing a user to make multiple recordings and uploading only one of those recording to a remote site would have been an obvious modification to one of ordinary skill in the art given the teachings of Hohenacker. Specifically, it is a common practice in the art to review, and if necessary rerecord poor performances, and only utilize one of the recordings. Therefore, Official Notice (see MPEP 2144.03) is taken that practice was well known in the art and is implemented in order allow the user to make errors and correct those errors.

32. As to claims 41 and 42, Hohenacker does not disclose said studio user or a talent seeker pays a subscription to provide said demographic information.

However, charging a subscription fee for desired data that has been acquired is a common practice in the art. Therefore, Official Notice (see MPEP 2144.03) is taken that it would have been an obvious modification to one of ordinary skill in the art at the time of the invention to charge subscription fees to users wishing to access the data acquired by the remote studios.

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33. Claims 4, 7, 12, 14-15, 17-19, 24-25, 32-33, 35-37, 48, 50, 55-56, and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hohenacker as applied to claims 1, 20, 38 and 51, in view of Chacker (US Pat. 6,578,008).

34. As to claims 4, 24, and 58, Hohenacker does not disclose a viewer purchases said recorded performance from a studio operator.

However, Chacker discloses a view purchasing an uploaded recorded performance from a studio operator (column 6, lines 63-65 and column 12, lines 48-53).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order for the studio to use the acquired recorded performances to earn a profit.

35. As to claims 7 and 25, Hohenacker does not disclose at least one information seeker bids to enter into contract negotiations with said studio user.

However, Chacker discloses an information seeker bids to enter into contract negotiations with an uploading artist (column 7, lines 8-25).

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Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order recruit talent (Chacker, column 4, lines 23-26).

36. As to claim 12, Hohenacker does not disclose said studio user electronically contracts with said studio operator for an exclusive agency contract for said recorded performance.

However, Chacker discloses an uploading artist electronically contracts with a studio operator for an exclusive agency contract for an uploaded performance (column 7, lines 8-25).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order to recruit talent (Chacker, column 4, lines 23-26).

37. As to claims 14, 32, 48, and 55, Hohenacker does not disclose a menu on said studio site lists subject matter and pre-determined main categories and sub-categories.

However, Chacker discloses a menu on a studio site lists subject matter and pre-determined main categories and sub-categories (column 10, lines 30-35).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order to create a user friendly interface by making the recorded performances more accessible.

38. As to claims 15 and 33, Hohenacker does not disclose a menu on said studio site allows user created categories and sub-categories.

However, Chacker discloses a menu on a studio site allows user created categories and sub-categories (column 10, lines 30-35).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order to create a user friendly interface by making the recorded performances more accessible.

39. As to claims 17, 35, 50, and 56, Hohenacker does not disclose said site further comprises a ratings means for enabling a viewer to rate said recorded performance wherein further said ratings means prohibits said viewer from rating said recorded performance more than once.

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However, Chacker discloses a ratings means for enabling a viewer to rate a recorded performance and preventing said viewer from compromising the ratings (column 7, lines 19-25, viewers trade stocks, effectively rating artists; viewers are giving a finite amount of resources to trade with).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order to allow direct user input which can then translate into popularity and marketing potential of prospective artists.

40. As to claims 18 and 36, Hohenacker and Chacker disclose the invention substantially with regard to the parent claim 17, and further disclose an information seeker is electronically notified when ratings from one or more viewers exceeds a pre-determined ratings threshold (Chacker, column 13, lines 23-28).

41. As to claims 19 and 37, Hohenacker and Chacker disclose the invention substantially with regard to the parent claim 18, and further disclose a studio operator is electronically notified when ratings from said viewers exceeds a predetermined ratings threshold (Chacker, column 13, lines 23-28).

***Conclusion***

42. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Dailey whose telephone number is 571-270-1246. The examiner can normally be reached on Monday thru Friday; 9:00am - 5:00pm.
43. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
44. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TJD

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/Kenny S Lin/

Primary Examiner, Art Unit 2152